

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

CORY O. BLACK,	:	
Plaintiff,	:	
v.	:	Case No. 3:18-cv-123
MONTGOMERY COUNTY	:	JUDGE WALTER H. RICE
COMMON PLEAS COURT, <i>et al.</i> ,	:	
Defendants.	:	

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DECISION AND ENTRY OVERRULING PLAINTIFF'S MOTION FOR  
RELIEF FROM JUDGMENT (DOC. #15); OVERRULING PLAINTIFF'S  
OBJECTIONS TO UNITED STATES MAGISTRATE JUDGE'S REPORT  
AND RECOMMENDATIONS (DOC. #16); CASE TO REMAIN  
TERMINATED ON DOCKET

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On June 28, 2018, the Court issued a Decision and Entry, Doc. #8, adopting the United States Magistrate Judge's Report and Recommendations, Doc. #7, and dismissing the case with prejudice. Judgment was entered in favor of Defendants. Doc. #9. Plaintiff later objected that he had not received a copy of the Report and Recommendations. Docs. ##10, 11. On August 10, 2008, the Court overruled his Objections, but directed the Clerk to mail him a copy of the Report and Recommendations and instructed Plaintiff that he could file a Motion for Relief from Judgment under Fed. R. Civ. P. 60(b), raising specific Objections to the Report and Recommendations. Doc. #12..

On August 13, 2018, Plaintiff filed a Notice of Appeal of the June 28, 2018, Decision and Entry. Doc. #13. This matter is currently before the Court on: (1) Plaintiff's Motion for Relief for Judgment, Doc. #15; and (2) Plaintiff's Objections to the Report and Recommendations, Doc. #16. Both were filed on August 27, 2018. The fact that Plaintiff has filed a Notice of Appeal does not affect the Court's ability to rule on Plaintiff's 60(b) motion. *See Fed. R. App. P. 4(a)(vi).*

Plaintiff seeks money damages based on his allegedly wrongful conviction and incarceration. In her Report and Recommendations, Doc. #7, Magistrate Judge Ovington recommended dismissal of Plaintiff's Complaint on several grounds: (1) Defendants Montgomery County Court of Common Pleas, Dayton Police Department, County Jail and Sheriff's Office are not entities capable of being sued; (2) the Eleventh Amendment bars Plaintiff's claims against the Ohio Department of Rehabilitation and Corrections, and the Ohio Bureau of Sentence Computation; (3) Plaintiff's claims are barred by the doctrine established in *Heck v. Humphrey*, 512 U.S. 477, 478 (1994); (4) Plaintiff's claims are barred by the statute of limitations; and (5) Plaintiff's conditions-of-confinement claims do not give rise to a claim of supervisory or municipal liability, are conclusory, and are filed in the wrong venue.

In his Motion for Relief from Judgment, Doc. #15, Plaintiff again argues that he was wrongfully convicted and incarcerated and given an unjust sentence. Likewise, in his Objections to the Report and Recommendations, Doc. #16, Plaintiff

argues that he was wrongfully convicted and should be provided a remedy under 42 U.S.C. § 1983 for violations of his constitutional rights. He also objects to the sentence imposed by the Montgomery County Court of Common Pleas. In neither filing does Plaintiff address any of the meritorious grounds for dismissal set forth by Magistrate Judge Ovington in her Report and Recommendations.

Having fully considered Plaintiff's Motion for Relief from Judgment under Fed. R. Civ. P. 60(b), Doc. #15, and Plaintiff's Objections to the Report and Recommendations, Doc. #16, the Court OVERRULES both of those filings. The Clerk of Court is DIRECTED to send a copy of this Decision and Entry to Plaintiff and to the United States Court of Appeals for the Sixth Circuit.

The above-captioned case shall remain terminated on the Court's docket.

Date: September 26, 2018

  
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WALTER H. RICE  
UNITED STATES DISTRICT JUDGE